



# Acquisition Advisory Panel Responses to Questions

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? In a non-competitive environment:

1. Under what conditions or circumstances do you buy *services* non-competitively/sole-source?
2. Do you ever accept a vendor's rate quote? If so, under what circumstances? If not, what specific analysis do you perform to assure your company is paying a fair and reasonable price? Do you use people with specific skills-sets to perform this analysis, and, if so, what sort of skill sets do they possess?
3. When you buy *services* without competition, what specific types of financial cost or pricing data do you get from the supplier? Do you seek any type of audit rights? If you do obtain audit rights, could you explain briefly what those consist of, who performs the audit, and any remedies?

? In a competitive environment:

4. When you buy *services*, what specific types of financial, cost or pricing data do you get from potential suppliers involved in the competition?
5. Do you seek any type of audit rights? If so, can you please explain as requested in Question 3 above?



## Responses to Question #1

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- ? Under what conditions or circumstances do you buy *services* non-competitively/sole-source?
- ? Response:
  - ? We usually don't advise our Clients to buy services on a sole-source basis in the commercial world. However, there are circumstances where we have to deal with a sole-source environment. This could be for the following reasons:
    - ? Existing Client relationship with a current vendor and
    - ? Un-willingness to switch to a new vendor (satisfied with the current service)
    - ? The only vendor with a viable service offering
    - ? Client Management decision/mandate to work with a specific vendor
    - ? Acquisition and divestiture support of an existing vendor



## Responses to Question #2

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? Do you ever accept a vendor's rate quote?

? Response:

? Even if the environment is sole-source, we still expect the vendor to provide its rate quotes in a manner consistent with an competitive environment. We still expect to receive fixed prices for service components that are clearly defined.

? If so, under what circumstances?

? Response:

? We will only accept a rate quote for areas where the requirements are not clearly defined and the Client does not know what it wants.

? In such a case, we would accept the rate quote for the services on a temporary basis, and the vendor will then be obligated to assist the client in defining the requirements. Once that is complete, we will then require a fixed bid.



## Responses to Question #2

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- ? If not, what specific analysis do you perform to assure your company is paying a fair and reasonable price?
- ? Response:
  - ? Any time a Client receives a sole-source bid, we advise that it should perform at least one of the following analyses:
    - ? Mark to Market – compare the vendor quote to the cost of service in the market, i.e., other vendors' offering that service, irrespective of the industry and based on the scope, size and type of service offering
    - ? Benchmarking – what are other customers in your industry paying for the service
    - ? “Should Cost” – an internal analysis of what the cost of the same service would be from ground up – Do you use people with specific skills-sets to perform this analysis, and, if so, what sort of skill sets do they possess?



## Responses to Question #2

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- ? Do you use people with specific skills-sets to perform this analysis, and, if so, what sort of skill sets do they possess?
- ? Response:
  - ? Mark to Market – specific companies that have data regarding the cost of services in the market are able to provide this kind of information in relation to the Client environment and service offering. Personnel with financial skills, familiarity with the particular services being analyzed, and access to the company database are required
  - ? Benchmarking – a formal process undertaken by a benchmarking firm that has specific data on the industry and the service offering
  - ? “Should Cost” – specific companies and people that have the Financial Architect role and understand the particular service offering and cost associated with such service offering are required



## Responses to Question #3

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- ? When you buy services without competition, what specific types of financial cost or pricing data do you get from the supplier?
- ? Response:
  - ? Even when we are advising Clients who buy services without competition, we still expect the vendor to provide financial and cost data in a format no different than a competitive bid. The details include:
    - ? Fixed price components – summary level
    - ? Fixed price components – detailed level including, service offering and any related components, geography, business unit etc.
    - ? Unit rates for adjustments in changes to resource consumptions
    - ? Fixed one time charges for transition and transformation activities – detailed breakout by components (e.g., hardware, software and labor)
    - ? Fixed charges for termination for convenience
    - ? Cost variance schedules to include scope expansions



## Responses to Question #3

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- ? Do you seek any type of audit rights?
- ? Response:
  - ? Typically, any commercial agreement will seek audits in the following areas:
    - ? Records Retention
    - ? Operational audits
    - ? Security audits
    - ? Financial audits
    - ? SOX Audits
    - ? SAS 70 Type II Audits





## Responses to Question #3

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- ? If you do obtain audit rights, could you explain briefly what those consist of, who performs the audit, and any remedies?
- ? Response:
  - ? Typical Audit language
    - ? The Vendor will maintain a complete audit trail of financial and non-financial transactions resulting from the Agreement. The Vendor will provide to Client, its internal or external auditors, inspectors, and regulators access at reasonable times to facilities where either the Supplier or any of its subcontractors is providing Services, to personnel, and to data and records relating to the Services for the purpose of performing audits and inspections of either the Vendor or its subcontractors for any reasonable business purpose, including (i) the accuracy of charges and invoices; (ii) audits and examinations by Client's regulatory authorities; (iii) for performance to the terms of the Agreement; (iv) for the conduct of Vendor operations and procedures relating to the Services or in Vendor's performance of the Services; (v) the efficiency of the Supplier in performing the Services; and (vi) for examination by Client of data and records pertaining to Client's compliance with the Sarbanes-Oxley Act of 2002, as amended from time to time



## Responses to Question #3

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### ? Response:

#### ? Typical Audit Follow-up

- ? The Vendor and Client shall meet to review each audit report promptly and to mutually agree upon an appropriate and effective manner in which to respond to the deficiencies identified and changes suggested by the audit report. If an audit reveals an overcharge, the vendor shall promptly refund such overcharge.
  
- ? The Vendor will make available promptly to Client the results of any reviews or audits conducted by the Vendor, its Affiliates or their subcontractors, agents or representatives (including internal and external auditors), relating to the Vendor's operating practices and procedures to the extent relevant to the Services or to Client.



## Responses to Question #3

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### ? Response:

#### ? Typical Audit Consequences

- ? If the Client determines, in his or her discretion, that further action is warranted, he or she will send a copy of the review to the Vendor. Where the review suggests that the Vendor's procedures or controls are unsatisfactory, the parties shall agree on a remedial plan and a timetable for achievement of improvements. Following agreement of the remedial plan, the Vendor shall implement that remedial plan in accordance with the agreed timetable, shall confirm its completion by a notice in writing to Client and shall allow Client (or its nominees) to conduct a further review to verify that the terms of the remedial plan have been implemented and to verify that the identified problems have been resolved. The process shall be repeated until Client, acting reasonably, is satisfied that the identified problems have been dealt with in a satisfactory manner



## Responses to Questions 4 and 5

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? In a competitive environment:

4. When you buy *services*, what specific types of financial, cost or pricing data do you get from potential suppliers involved in the competition?
5. Do you seek any type of audit rights? If so, can you please explain as requested in Question 3 above?

? Response:

4. See response to Questions # 3 above
5. Please see response above to the audit question. In a fixed price competitive environment, we would negotiate away some of the above audit requirements